



POSTAL REGULATORY COMMISSION

[Docket No. PI2023-3; Order No. 6479]

Classification of First-Class Package Service Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is initiating a proceeding to explore commenters' claims that the First-Class Package Service product may not be correctly classified as a Competitive product. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 26, 2023; *Reply Comments are due:* August 23, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In Order No. 6384, the Commission stated it would initiate a proceeding to explore commenters' claims that the First-Class Package Service (FCPS)

product¹ may not be correctly classified as a Competitive product.² The Commission establishes this docket to examine those claims.

II. Background

A. Statutory Framework

Under the Postal Accountability and Enhancement Act (PAEA),³ postal products are separated into two distinct classifications: Market Dominant and Competitive. 39 U.S.C. 3621, 3631, 3642. Section 3642 of title 39 governs the addition of products to, removal of products from, or transfer of products (or components of a product) between the Market Dominant and Competitive product lists.⁴ The Commission may consider a change to a product's classification upon request of the Postal Service, upon request of users of the mail, or upon its own initiative. 39 U.S.C. 3642(a). There is nothing to prevent transfer of only part of a product between product lists. 39 U.S.C. 3642(c).

The criteria for assigning a product to either the Market Dominant or Competitive product list are described in 39 U.S.C. 3642(b). These criteria include an assessment of the Postal Service's market power, whether or not the product is covered by the postal monopoly, the availability and nature of private sector competitors, the views of users of the product, and the likely impact on small businesses. *Id.* The market power criteria are specified in 39 U.S.C. 3642(b)(1), the postal monopoly criteria are specified in 39 U.S.C. 3642(b)(2),

¹ As defined in section 2125 of the Mail Classification Schedule (MCS), available at <https://www.prc.gov/mail-classification-schedule>.

² Docket No. CP2023-42, Order Approving Price Adjustments for Competitive Products, December 22, 2022, at 11 (Order No. 6384).

³ Pub. L. 109-435, 120 Stat. 3198 (2006).

⁴ 39 U.S.C. 3642. The implementing regulations for this section appear in 39 CFR part 3040.

and the considerations related to private sector competitors, users of the product, and small businesses are specified in 39 U.S.C. 3642(b)(3).

B. Historical Classification of First-Class Package Service

Until April 2011, the First-Class Mail Parcels (FCMP) product appeared on the Market Dominant list and included four price categories: Commercial Plus, Commercial Base, Retail Single-Piece, and Keys and Identification Devices.⁵ On February 24, 2011, the Postal Service filed a request with the Commission to transfer the Commercial Plus and Commercial Base categories to the Competitive product list and to provisionally rename them “Lightweight Commercial Parcels.”⁶ The Lightweight Commercial Parcels product was proposed to be identical to the Commercial categories of FCMP, except that items classified as “letters” would be prohibited. Docket No. MC2011-22, Notice at 2. The Postal Service did not request transfer of the Retail Single-Piece or Keys and Identification Devices subcategories at that time. The transfer was unopposed. Order No. 710 at 3-5. On April 6, 2011, the Commission granted the Postal Service’s transfer request.

On August 12, 2011, the Postal Service requested to change the provisional Lightweight Commercial Packages name to Commercial First-Class Package Service.⁷ The Postal Service also requested to remove the letter prohibition from the Commercial Plus price category, as Commercial Plus prices were more than six times the price of a 1-ounce Single-Piece First-Class Mail Letter and thus not subject to the postal monopoly. Docket No. MC2011-28,

⁵ Docket No. MC2011-22, Order Adding Lightweight Commercial Parcels to the Competitive Product List, April 6, 2011, at 2 (Order No. 710).

⁶ Docket No. MC2011-22, Request of the United States Postal Service Under Section 3642, February 24, 2011, at 1 (Docket No. MC2011-22, Notice).

⁷ Docket No. MC2011-28, Notice of Minor Classification Change, August 12, 2011, at 1 (Docket No. MC2011-28, Notice).

Notice at 2. On August 31, 2011, the Commission granted the Postal Service's requests.⁸

On November 14, 2014, the Postal Service proposed to transfer the remaining two price categories of FCMP: Retail Single-Piece and Keys and Identification Devices to the Competitive product list.⁹ The Postal Service noted that some large commercial mailers used both Retail Single-Piece FCMP and Commercial FCPS, suggesting that the products served a single market. Docket No. MC2015-7, Notice, Attachment B at 3. The Postal Service further stated that the new combined FCPS product would compete in the 2-3-day air and ground parcel markets and would not have a dominant share of those markets. *Id.* at 4. On August 26, 2015, the Commission denied the Postal Service's transfer request on the grounds that the Postal Service had not presented sufficient evidence for the Commission to determine the market in which Retail Single-Piece FCMP operated.¹⁰ The Postal Service filed a petition for review of Order No. 2686 with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). On December 6, 2016, the D.C. Circuit granted the petition for review and remanded Order No. 2686 to the Commission for further proceedings.¹¹ The D.C. Circuit noted that the Postal Service had supplied the same type of market share data that the Commission previously relied upon when approving previous transfer requests. *U.S. Postal Serv.*, 842 F.3d at 1273.

⁸ Docket No. MC2011-28, Order Regarding Commercial First-Class Package Service, August 31, 2011, at 8 (Order No. 835).

⁹ Docket No. MC2015-7, Request of the United States Postal Service to Transfer First-Class Mail Parcels to the Competitive Product List, November 14, 2014, at 1 (Docket No. MC2015-7, Notice).

¹⁰ Docket No. MC2015-7, Order Denying Transfer of First-Class Mail Parcels to the Competitive Product Category, August 26, 2015, at 1 (Order No. 2686).

¹¹ *U.S. Postal Serv. v. Postal Regul. Comm'n*, 842 F.3d 1271 (D.C. Cir. 2016) (per curiam).

The D.C. Circuit explained that by rejecting that data as insufficient, the Commission had changed the nature of proof required to demonstrate a lack of market power compared to the previous transfer dockets but had neither acknowledged nor explained its change in course. *Id.* The D.C. Circuit noted that the previous transfers were not materially different from the proposed transfer and concluded that the Commission was obliged to “forthrightly distinguish or outrightly reject” its precedent established in the previous transfer orders when deciding to change course. *Id.* at 1274. As the Commission had not done so in Order No. 2686, the D.C. Circuit remanded the case to the Commission for further proceedings. *Id.*

Following the D.C. Circuit’s remand, the Postal Service updated its original proposal and provided additional information in response to a Chairman’s Information Request.¹²

Based on this data and other updates occurring in the interim between the original proposed transfer and the updated proposal, the Commission found that the Postal Service did not possess power over the market for Retail Single-Piece FCMP or the combined FCPS product and approved the transfer. *Id.* at 32-34, 40. The Commission observed that the market share of the combined FCPS product had decreased since FY 2013, and that price increases to the Retail Single-Piece FCMP product had coincided with decreased volume. *Id.* at 31, 33. The Commission further determined that transfer of the product would not violate the postal monopoly. *Id.* at 34-35. Finally, the Commission concluded that the

¹² Docket No. MC2015-7, Order Conditionally Approving Transfer, July 20, 2017, at 2-3 (Order No. 4009); see Docket No. MC2015-7, Response of the United States Postal Service to Chairman’s Information Request No. 2, June 26, 2017 (Docket No. MC2015-7, Response to CHIR No. 2).

transfer was justified in consideration of the factors set forth in 39 U.S.C.

3642(b)(3). *Id.* at 37.

C. Recent Developments Regarding First-Class Package Service

On June 17, 2021, the Postal Service filed a request for an advisory opinion on its proposal to revise the service standards for FCPS, effective October 1, 2021.¹³ Specifically, the Postal Service sought to lengthen the service standards by 1 to 2 additional days for approximately 31.2 percent of FCPS volume and to shorten the service standards by 1 day for approximately 4.8 percent of FCPS volume.¹⁴ The Commission concluded, among other things, that the Postal Service's stated goals appeared reasonable and that the proposed changes should have a positive impact on the Postal Service's ability to meet its performance targets. Docket No. N2021-2, Advisory Opinion at 3. However, the Commission also noted certain concerns with the Postal Service's modeling of cost savings, transportation efficiencies, and network operations. *Id.* at 3-4.

On July 13, 2022, the Postal Service filed with the Commission a request to expand the FCPS product up to 70 pounds, with corresponding changes to the size (dimension) limitations and pricing tiers.¹⁵ However, the Postal Service later informed the Commission that the changes would be postponed to such time in calendar year 2023 as management deemed appropriate.¹⁶

¹³ Docket No. N2021-2, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 17, 2021, at 1 (Docket No. N2021-2, Request).

¹⁴ Docket No. N2021-2, Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service, September 29, 2021, at 1-2 (Docket No. N2021-2, Advisory Opinion).

¹⁵ Docket No. MC2022-82, USPS Notice of Changes in Classifications of General Applicability for Competitive Products, July 13, 2022, at 1-2 (Docket No. MC2022-82, Notice).

¹⁶ Docket Nos. MC2022-81 and MC2022-82, USPS Notice of Revised Effective Date, Pursuant to Governors' Decision 22-4, August 16, 2022, at 1-2.

On October 28, 2022, the Commission approved the Postal Service's proposed classification changes.¹⁷ The Commission determined that the Postal Service's request to remove USPS Retail Ground from the Competitive product list satisfied the requirements of 39 U.S.C. 3642 and the Commission's regulations. Order No. 6318 at 13. The Commission determined that the proposed changes would likely have a positive effect on users of FCPS and small businesses and would not likely have a material effect on competitors. *Id.* at 18.

On November 14, 2022, the Commission established Docket No. CP2023-42 to consider the Postal Service's notice concerning changes in rates and classifications of general applicability for Competitive products, which were scheduled to take effect on January 22, 2023.¹⁸ In its notice, the Postal Service proposed a 6.9 percent average price increase for Retail FCPS and an 8.0 percent average price increase for Commercial FCPS. Order No. 6327 at 3.

On December 22, 2022, the Commission approved the Postal Service's proposed rate changes. Order No. 6384 at 1. In so doing, the Commission concluded that the commenters' claims that the Commission erred in transferring FCPS to the Competitive product list were beyond the scope of the proceeding. *Id.* at 10. The Commission further noted that the increase in FCPS prices and recent changes to FCPS service standards cited by the commenters did not, on their own, establish that the Postal Service took such actions without risk of losing significant business to competitors. *Id.* (citing 39 U.S.C. 3642(b)(1)). The

¹⁷ Docket Nos. MC2022-81 and MC 2022-82, Order Removing USPS Retail Ground from the Competitive Product List and Approving Competitive Classification Changes to First-Class Package Service and Parcel Select, October 28, 2022, at 1 (Order No. 6318).

¹⁸ Docket No. CP2023-42, Notice and Order Concerning Changes in Rates and Classifications of General Applicability for Competitive Products, November 14, 2022, at 1 (Order No. 6327).

Commission stated that it would “explore commenters’ claims that FCPS may not be correctly classified as a Competitive product” in a separate proceeding. *Id.* at 11.

On February 10, 2023, the Postal Service filed a notice of rate adjustment for Competitive products in which it proposed rates of general applicability for the expanded FCPS product, up to 70 pounds, effective July 9, 2023.¹⁹ In addition, the Postal Service proposed renaming the enhanced and expanded product “USPS Ground Advantage.” Docket No. CP2023-113, Notice at 1. The Postal Service also stated that Certificate of Mailing and Certified Mail would be removed from the list of optional features for USPS Ground Advantage, and that it was submitting two additional minor corrections to the MCS. *Id.* at 4. Those proposed changes are currently pending before the Commission in Docket Nos. CP2023-113 and CP2023-114.

III. Invitation for Comments

The Commission invites interested persons to comment on whether FCPS, as currently defined, is properly classified as a Competitive product. Specifically, the Commission invites comments, as well as supporting evidence and analysis, regarding the relevant market(s) in which FCPS operates and the Postal Service’s market power in such market(s), that could either call into question or support the Commission’s previous determination that the Postal Service could not effectively set the price of FCPS substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.²⁰ In

¹⁹ Docket No. CP2023-113, USPS Notice of Changes in Rates and Classifications of General Applicability for First-Class Package Service, February 10, 2023, at 2-3 (Docket No. CP2023-113, Notice).

²⁰ Order No. 4009 at 33 (citing 39 U.S.C. 3642(b)(1)).

addition, in light of the Postal Service's proposed expansion and enhancement of FCPS and its proposed renaming to USPS Ground Advantage, commenters questioning the Competitive classification of FCPS should also discuss whether any portion of the proposed USPS Ground Advantage product should be classified as Market Dominant and provide supporting analysis addressing the criteria set out in 39 U.S.C. 3642(b) and prior Commission decisions applying section 3642(b).

Comments are due on July 26, 2023. Any reply comments are due on August 23, 2023. Materials filed in this docket will be available for review on the Commission's website at <http://www.prc.gov>. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller will serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

By the Commission.

Mallory Richards,

Attorney-Advisor.

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